

Introduced by Senator Kuehl

January 24, 2007

An act to amend Section 653m of the Penal Code, relating to criminal communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as introduced, Kuehl. Criminal communications.

Existing law makes it a misdemeanor punishable by a maximum of 6 months in the county jail or a \$1,000 fine or both for a person to make telephone calls or contact with an electronic communication device with the intent to annoy another person at his or her residence. Existing law additionally makes it a misdemeanor punishable by a maximum of one year in the county jail or a \$1,000 fine or both for a person to make telephone calls or contact with an electronic communication device with the intent to annoy another person at his or her place of work.

This bill would, instead, make it a misdemeanor punishable by a maximum of 6 months in the county jail or a \$1,000 fine or both for a person to make telephone calls or contact with an electronic communication device with the intent to annoy another person at any place. However, if the call or contact occurs when there is a specified protective order in effect prohibiting the call or contact, or if the person making the call or contact has or had a specified relationship with the person to whom the call or contact is directed, then the conduct is punishable by a maximum of one year in the county jail or a \$1,000 fine or both.

This bill would also provide that a person is subject to the described penalties if the person knowingly permits any telephone or electronic communication device under the person's control to be used for the prohibited purpose.

Because this bill would expand the scope of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653m of the Penal Code is amended to
2 read:

3 653m. (a) Every person who, with intent to annoy, telephones
4 or makes contact by means of an electronic communication device
5 with another and addresses to or about the other person any obscene
6 language or addresses to the other person any threat to inflict injury
7 to the person or property of the person addressed or any member
8 of his or her family, is guilty of a misdemeanor. Nothing in this
9 subdivision shall apply to telephone calls or electronic contacts
10 made in good faith.

11 (b) Every person who, *with intent to annoy or harass*, makes
12 repeated telephone calls or makes repeated contact by means of
13 an electronic communication ~~device with intent to annoy another~~
14 ~~person at his or her residence; device, or makes any combination~~
15 ~~of calls or contact, to another person~~ is, whether or not
16 conversation ensues from making the telephone call or *contact by*
17 *means of an electronic communication device*, guilty of a
18 misdemeanor. Nothing in this subdivision shall apply to telephone
19 calls or electronic contacts made in good faith *or during the*
20 *ordinary course and scope of business*.

21 ~~(c) Every person who makes repeated telephone calls or makes~~
22 ~~repeated contact by means of an electronic communication device~~
23 ~~with the intent to annoy another person at his or her place of work~~
24 ~~is guilty of a misdemeanor punishable by a fine of not more than~~
25 ~~one thousand dollars (\$1,000), or by imprisonment in a county jail~~
26 ~~for not more than one year, or by both that fine and imprisonment.~~
27 ~~Nothing in this subdivision shall apply to telephone calls or~~

1 ~~electronic contacts made in good faith. This subdivision applies~~
2 ~~only if one or both of the following circumstances exist:~~

3 ~~(1) There is a temporary restraining order, an injunction, or any~~
4 ~~other court order, or any combination of these court orders, in~~
5 ~~effect prohibiting the behavior described in this section.~~

6 ~~(2) The person makes repeated telephone calls or makes repeated~~
7 ~~contact by means of an electronic communication device with the~~
8 ~~intent to annoy another person at his or her place of work, totaling~~
9 ~~more than 10 times in a 24-hour period, whether or not~~
10 ~~conversation ensues from making the telephone call or electronic~~
11 ~~contact, and the repeated telephone calls or electronic contacts are~~
12 ~~made to the workplace of an adult or fully emancipated minor who~~
13 ~~is a spouse, former spouse, cohabitant, former cohabitant, or person~~
14 ~~with whom the person has a child or has had a dating or~~
15 ~~engagement relationship or is having a dating or engagement~~
16 ~~relationship.~~

17 *(c) If the conduct described in subdivision (a) or (b) occurs*
18 *when either of the following circumstances exist, the person making*
19 *the telephone call or calls, or contact by means of an electronic*
20 *communication device or devices, or any combination thereof, is*
21 *guilty of a misdemeanor punishable by a fine of not more than one*
22 *thousand dollars (\$1,000), or by imprisonment in a county jail for*
23 *not more than one year, or by both that fine and imprisonment:*

24 *(1) There is an emergency protective order, a temporary*
25 *restraining order, an injunction, or any other court order, or any*
26 *combination of these court orders, in effect, which prohibits the*
27 *behavior described in these subdivisions.*

28 *(2) The person making the telephone call or calls, or contact*
29 *by means of an electronic communications device or devices, is a*
30 *spouse, former spouse, cohabitant, former cohabitant or person*
31 *with whom the person has a child or has had a dating or*
32 *engagement relationship or is having a dating or engagement*
33 *relationship with the person to whom the call, calls, or contact is*
34 *intended.*

35 *(d) Any offense committed by use of a telephone may be deemed*
36 *to have been committed when and where the telephone call or calls*
37 *were made or received. Any offense committed by use of an*
38 *electronic communication device or medium, including the Internet,*
39 *may be deemed to have been committed when and where the*

1 electronic communication or communications were originally sent
2 or first viewed by the recipient.

3 (e) Subdivision (a), ~~(b), or (c)~~ or (b) is violated when the person
4 acting with intent to annoy makes a telephone call *or contact by*
5 *means of an electronic communication device* requesting a return
6 call and performs the acts prohibited under subdivision (a), ~~(b), or~~
7 ~~(c)~~ or (b) upon receiving the return call.

8 (f) Subdivision (a) or (b) is violated when a person knowingly
9 permits any telephone or electronic communication under the
10 person's control to be used for the purposes prohibited by those
11 subdivisions.

12 ~~(f)~~

13 (g) If probation is granted, or the execution or imposition of
14 sentence is suspended, for any person convicted under this section,
15 the court may order as a condition of probation that the person
16 participate in counseling.

17 ~~(g)~~

18 (h) For purposes of this section, the term "electronic
19 communication device" includes, but is not limited to, telephones,
20 cellular phones, computers, video recorders, ~~fax~~ *facsimile*
21 machines, or pagers. "Electronic communication" has the same
22 meaning as the term defined in Subsection 12 of Section 2510 of
23 Title 18 of the United States Code.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.